IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.82 of 2005.
in
FAMILY COURT APPEAL NO.35 OF 2005

Uttara Milind Chavan ..Applicant.

Versus

Milind Anant Chavan ..Respondent

Mrs.V.V.Thorat for the applicant

Mr.Anturkar for the respondents

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 21st July, 2005

P.C.

1. Heard learned Counsels for both sides.

2. This is an interim application filed by the Applicant-wife against the Respondent-husband while the Family Court Appeal No.35 of 2005 arising from the Family Court matter is pending before this Court. By this Civil Application the Applicant-wife has made following prayers:

(i) Grant of enhancement in interim maintenance at the rate of Rs.10,000/- per

month for her children namely daughter Apurva and son Achintya and maintenance of Rs.2000/- for herself. Thus, the total interim maintenance claimed is Rs.12,000/- per month for all the applicants.

(ii) It is further prayed that the Respondent be restrained from disposing off or creating third party interest in the property described as C-60, Abhimanshree Co-op. Hsg. Society Ltd, Baner Road, Pune, which partly stands in the name of the Respondent alongwith his brother.

(iii) It is further prayed that the Respondent be prohibited by order of injunction from entering the residential premises on the first floor of C-60 Abhimanshree Co-op. Hsg. Society, Baner Road, Pune.

(iv) Restrain the Respondent from forcibly removing or dispossessing the applicant and her children from her matrimonial house referred to above.

3. There is a reply filed by the Respondent

opposing the above said application.

4. During the pendency of this application we have referred the matter for mediation, but the mediation has failed. Thereafter, we too have tried to explore the possibility of settlement with the aid of Advocate's of both sides. However, ultimately, that attempt also has failed.

5. So far as the issuance of injunction as prayed in clause b, c and d in the Civil Application is concerned, Mr.Anturkar, the learned Counsel appearing for the Respondent was fair enough to state that such injunction may be granted against the Respondent-husband. He further agreed that if such injunction is passed it will minimise the dispute between the parties. However, he very seriously contested the claim in respect of quantum of maintenance.

6. Before we consider the actual quantum of maintenance on private contentions, we would like to mention that the parties are coming from very highly reputed and well to do families. The house property i.e. C-60 Abhimanshree Co-operative Housing Society is a six bed room bungalow located opposite Pune

University Road. The said area is known to be one of the affluent areas of Pune City. The Respondent is a qualified Engineer. Prior to the dispute between the parties, both the children Apurva and Achintya were admitted in a convent school named as St.Helena School by consent of both of them. At the relevant time the Respondent was working with Crompton Greaves and his monthly income was Rs.23,000/-. The case of the Respondent is that as he was not satisfied with the job, he has left the job with Crompton Greaves and presently he doing the agency work with Herbal Life Care and earning Rs.5000/- per month. We do not find that because there is no satisfaction the applicant will give up the service with Crompton Greaves and accept the business with a meagre earning of Rs.5000/-. The applicant might have given up the service for getting better prospects and definitely he must be earning more than Rs.25,000/- monthly as it is a agency business, but suffice it to state that these admitted facts will show the standard of living of the family and their so stated status which we have to deal with while fixing the amount of quantum of maintenance. Before we deal with the actual point of maintenance, we would like to place on record that the applicant wife has made an application under Section 24 of the Hindu Marriage Act for getting interim alimony before the

Family Court, Pune when the matter was pending before the said Court. Since the Family Court has found that the applicant wife is getting Rs.3200/- per month, even though employed as temporary, the Family Court rejected her maintenance. However, the Family Court has directed that the Respondent shall pay maintenance at the rate of Rs.2000/- to the two children namely Apurva and Achintya. In this view of the circumstances, the applicant wife has preferred this Civil Application claiming Rs.2000/- for herself and Rs.10,000/- for the children by way of interim maintenance during the pendency of this appeal.

7. Both, Applicant and Respondent have filed their affidavits. From the affidavit of both the parties it is reflected that there is no dispute on point of items of expenditure, their dispute is regards to the amount of expenditure. The following chart will reflect the claims made towards the expenditure by both the parties.

Sr.No.	**Items**	**Expense per month**	
		according to Applicant	**according to Respondent**

1.	School Tution Fees	Rs.3500/-	Rs.1000/-
2.	School Books & Stationery	Rs.350/-	Rs.200/-
3.	School Conveyance-children	Rs.1150/-	Rs.1000/-
4.	Applicants personal conveyance	Rs.700/-	N.A.
5.	Misc. expenses for school	Rs.400/-	already included in tution fees
6.	Special Coaching	Rs.1500/-	Rs.100/-
7.	Telephone charges	Rs.1000/-	
8.	Milk Charges	Rs.900/-	Rs.900
9.	Fruits & Vegetables	Rs.1000/-	Rs.500 combined with
10.	Groceries	Rs.1500/-	groceries
11.	Maid Servant	Rs.600/-	Rs.500/-
	TOTAL	Rs.12,600/-	Rs.4700/-
12.	Yearly Expenses. Casual Clothes, shoes ,dress material, etc yearly	Rs.20,000/-	Rs.3000/-
13.	School Uniform, shoes	Rs.3500/-	-

14.Medical expenses yearly	Rs.20,000/-	Rs.1000/-
TOTAL	Rs.43,500/	Rs.4000/-

8. Thus, the wife has claimed expenditure of Rs.12,600/- on monthly basis and Rs.43,500/- on yearly expenditure. Thus the total yearly amount claimed by her is 12,600 x 12 + 43,500 = 1,94,700/-. If we divide this total amount by 12 months so as to find out the aggregate monthly expenditure, it approximately comes to Rs.16,225/-.

9. As against that if we take into consideration the affidavit of the Respondent-husband it can be seen that he has admitted the total monthly expenditure to be Rs.4700/- and yearly expenditure Rs.4000/-. Thus, according to him the total yearly expenditure is Rs.4,700 x 12 + Rs.4,000/- = Rs.60,400/- and the aggregate monthly expenditure according to him comes to approximately Rs.5,025/-.

10. On going through the affidavit and the documents filed alongwith it, we are satisfied with the affidavit and the documents filed by the applicant wife because there are actual expenditure receipts produced by her to support the affidavit. As against that the

figures which are reflected in the affidavit of the Respondent-husband are hypothecated one and are not supported by any documents. Further, it may be possible that in some items the applicant wife might have given exaggerated amount but if we look to the figures given by her they are equally miser's approach. We find that the amount of Rs.43,500/- claimed by her towards school uniform, shoes, casual clothes and medical expenses etc appears to be exaggerated. However, the rest of the monthly expenses appear to be genuine as they are practically supported by receipts. However some amount will have to be given to her on yearly basis for casual clothes, school uniform, medical expenses etc. We quantify that amount to Rs.20,000/-. The quantification made by the Respondent husband of such amount at Rs.4000/- is not accepted by us. Thus, according to us the family requires Rs.12600 x 12 + Rs.20,000 = Rs.1,71,200/- on yearly basis. Therefore, the approximate monthly income incurred by the applicant will be Rs.1,71,200 divide by 12 = Rs.14,200/- approximately.

11. The Applicant-wife has admitted that she is earning Rs.3200/- per month. Therefore, this amount will have to be deducted from the monthly expenditure i.e. Rs.14,200/-. Thus the alimony which will have to

be granted to her towards the expenditure for herself and her children is Rs.11,000/- per month.

12. Now, coming to the injunctions prayed for, we would like to mentioned that we are not simply going by the concessions given by Mr. Anturkar in respect of the injunctions to be granted as prayed in clause b, c and d of the Civil Application. Apart from that there are facts on record that the property was tried to be mutated in the name of the father of the Respondent, which was objected by the Applicant-wife and therefore the said mutation has not taken place. It is also brought to our notice that certain household articles have been removed by the Respondent-husband without the knowledge and permission of the wife. This persuades us to grant injunction as prayed. In the result we allow this Civil Application and pass the following order.

ORDER

i. The respondent is hereby directed that he shall pay monthly maintenance at the rate of Rs.11,000/- per month to applicant and her children from the date of this application till the disposal of the appeal.

ii. We further grant injunction in terms of prayer clause (b), (c) and (d).

iii. We further make it clear that the Respondent shall not obstruct the electricity and water facilities to be provided to the applicant and her children.

iv. The learned Advocate for the Respondent Mr.Tanaji Mhatgude, holding for Mr.Anturkar submitted that the order may be stayed for four weeks. However, looking to the facts that the matter is pending for long time, and there is grievance made by the Applicant/wife that if the payment is not made immediately to the school authorities, the school authorities are likely to remove the names of the children from the school. Therefore, we are not inclined to grant stay.

(S.R.Sathe, J.) (S.B.Mhase,J.)

1. Heard.

2. This is an application filed by Applicant wife against the Respondent husband while the appeal arising from the Family Court matter is pending before this Court. By this Civil Application the Applicant is claiming the grant of interim maintenance of Rs.10,000/- per month towards maintenance and expenses of the children namely daughter Apoorva and son Achintya, and Rs.2000/- towards her maintenance. Thus, she has claimed interim alimony at the rate of Rs.12,000/- per month. Apart from this claim for interim alimony the applicant has also prayed for injunction restraining the Respondent from disposing off or creating third party rights in respect of his half share in the residential premises known as C/60 Abhimanshree Co-operative Housing Society Limited, Baner Road, Pune, and third prayer made by the Applicant is that by order of injunction the Respondent

husband be restrained from entering the residential premises on the upper floor of the house known as C/60, Abhimanshree Co-operative Housing Society Limited. It is further claimed that the further injunction may be granted by prohibiting the Respondents from forcibly removing and dispossessing the applicant and her children from the matrimonial home i.e. upper floor of the house known as Abhimanshree Co-operative Housing Society Limited.

2. In reply to both these Civil Applications the Respondent has filed reply and has opposed the Civil Application very strenuously.

3. During the pendency of this Civil Application, we tried to explore the possibility of settlement of the matter with the aid of the Advocates of both the parties. Apart from the fact that the matter was earlier referred for mediation and the mediation has failed.

4. At the hearing of both these Civil Applications the, the civil application is mainly contested in respect of the quantum of maintenance. So far as the issuance of the injunctions at clause (b), (c) and (d) of the Civil Applications are concerned, Mr. Anturkar,

learned Counsel appearing for the Respondent was fair enough to state that such injunctions may be granted and he pointed out that this arrangement, if made, will minimise the dispute between the parties which are taking place on day to day basis.

5. The main question remains about the quantum of maintenance. Now, so far as the maintenance of the wife is concerned, the Applicant wife is employed and she is getting Rs.3200/- per month, though it is a temporary job. However, looking to this income of the wife, the said application of the wife was rejected. However, the main cause for rejection was that the wife is getting income from her salary to the extent of Rs.3200/-. The Family Court has granted maintenance at the rate of Rs.3000/- to both the children. Thus, it will be evident that during the pendency of the case in the trial Court, the wife was getting only Rs.3000/- by way of maintenance for her children Apoorva and Achintya.

6. In this background of the circumstances, the present Civil Application has been moved by the wife for interim maintenance at the rate of Rs.2000/- for herself and Rs.10,000/- for her children. The age of the daughter is 13 years, studying in 7th standard and

the age of Achintya is 11 years studying in 5th standard. They are studying in a Convent School namely St. Helena's School and the chart of the expenditure required by the wife and children has been given to us as follows:

Sr.No.	Items	Expense per month
1.	School Tution Fees	Rs.3500/-
2.	School Books & Stationery	Rs.350/-
3.	School Conveyance-children	Rs.1150/-
4.	Applicants personal conveyance	Rs.700/-
5.	Misc. expenses for school	Rs.400/-
6.	Special Coaching	Rs.1500/-
7.	Telephone charges	Rs.1000/-
8.	Milk Charges	Rs.900/-
9.	Fruits & Vegetables	Rs.1000/-
10.	Groceries	Rs.1500/-
11.	Maid Servant	Rs.600/-
	TOTAL	Rs.12,600/-
12.	Yearly Expenses.	
	Casual Clothes, shoes ,dress material, etc yearly	Rs.20,000/-
13.	School Uniform, shoes yearly	Rs.3500/-
14.	Medical expenses yearly	Rs.20000/-

Thus, on monthly basis the expenditure shown is shown Rs.12,600/- and on yearly basis Rs.43,500/-. Thus the total expenditure claimed for the year is Rs.43,500+12600=Rs.56,100/-.

This is opposed by the husband by filing the counter application and according to him the following is the expenditure.

Sr.No.	Item	Expense per month
1.	School Tution Fees	Rs.1800/-
2.	School Books & Stationery	Rs.200/-
3.	School Conveyance-children	Rs.1000/-
4.	Applicants personal conveyance	N.A.
5.	Misc. expenses for school	Already included in tuition fees
6.	Special Coaching	Rs.100/- (Karate Class)
7.	Telephone charges	
8.	Milk Charges	Rs.600/-
9.	Fruits & Vegetables	Rs.500/- combined for fruits & Groceries.
10.	Groceries	
11.	Maid Servant	Rs.500/-

TOTAL	Rs.4,700/-
12.Yearly Expenses.	
Casual Clothes, shoes ,dress material, etc yearly	Rs.3,000/- combined with
13.School Uniform, shoes yearly	School uniform
14.Medical expenses yearly	Rs.1000/-
TOTAL	Rs.4000/-

Thus, according to the husband the total yearly expenditure is Rs.4000 + Rs.4700 = Rs.8700/- What is pertinent to note is that if both the charts are compared, the items of expenditure are not in dispute, there is only dispute about the quantum of expenditure. However, it is to be noted that alongwith the affidavit which has been filed by the Applicant wife, the applicant wife has produced actual payment receipts of the expenditure being incurred on schooling, school fees and conveyance etc. As against this there is a mere affidavit of the respondent. On perusal, what we find is that all the while an attempt has been made by the Respondent husband to reduce the amount of the expenditure to see that the expenditure which may have been included by the wife is excluded and thus the figures have been squalled down by the Respondent

husband and this is only because of the strained relations. What we find is that the statement of expenditure though may be exaggerated on behalf of the wife, however, the statement is shown by the Respondent is also miser's vindictive approach and therefore, what we find is that the monthly expenditure of the family shall be Rs.12,000/- for the wife and both the children, considering their standard of living and the locality in which they are residing and the school in which they are taking education.

7. Therefore, we find that the Respondent is in obligation to pay Rs.12,000/- for the family on monthly basis. Looking to the figures of the yearly expenditure, We feel it proper that instead of accepting the amount of Rs.43,500/- as shown by the Applicant wife and Rs.4000/- as valued by the Respondent husband, on account of yearly expenditure the family is entitled to get the amount of Rs.20,000/- on yearly basis. Thus, calculating to total yearly expenditure of the family will be Rs.12,000 x 12 = Rs.1,44,000 + Rs.20,000 = 1,64,000/- and thus the total monthly income would be 1,64,000 divide by 12 = 13,666/- approximately, out of which the wife is earning Rs.3200/- per month. Under these circumstances, we find that Respondent Husband must pay Rs.10,500/-

(13,700-3,200=10,500/-) to the Applicant wife and children towards their maintenance.

8. The learned Counsel for the Respondent, Shri Anturkar submitted that the Respondent husband has left the earlier service as it was not giving satisfaction to him and now he is carrying on the agency business for Herbal Life and his monthly income is approximately Rs. 5,000/- per month, and therfore, he submitted that his pocket does not permit the expenditure as pointed out by the Applicant. However, we are not in agreement with the learned Counsel. We are told that the present premises where the Applicant wife and the Respondent are staying alongwith the father and brother of the Respondent is a six bed room bungalow located in Abhimanshree Society, which is located opposite Pune University Gate and which is known to be one of the affluent areas in Pune, and under these circumstances, we do not find that because there is no satisfaction the applicant will give up service of Crompton Greaves by accepting the business of a meagre earning of Rs.5000/- per month. It is admitted position that while the Respondent was working with Crompton Greaves and his salary was more than Rs.25,000/- per month and therefore we find that must have given up the services for getting better prospects and we find that

definitely his income must be more than 25,000/-. Since it is an agency business, the true particulars of the agency income are not coming forward and therefore we find that the applicant is certainly earning more than Rs.25,000/-. There is one more aspect to be considered, i.e. the children were admitted in Convent School of which receipts have been produced. It is true that the children were admitted to the said school when both the husband and wife were residing together and both of them had jointly selected the school for their children as per their standard of living, and therefore, it will be improper to conclude that he is not having that much income to provide to his wife. In reality we find that he is in possession of the assets to provide the income as we have fixed. We would also like to mention here that from the disputes and the submissions made at bar, it appears that initially this house property was also tried to be mutated in the name of the father which is actually standing in the name of the Respondent and brother of the Respondent. Some of the household articles have also been removed from the house of the Applicant. On perusal of the bank accounts we find that in the bank account some entries are transfer entries. That gives a feeling that there is an attempt to syncop the funds of the family so as to defraud the claim of maintainence of the wife and

children. All these facts ultimately lead to only one inference that the Respondent is capable and is in possession of assets and is capable to bear the burden of the expenditure of schooling of the children as we have analysed and to provide monthly maintenance at the Rate which we have fixed.

9. Now, coming to the part of injunction it is an admitted position that the wife and the children are staying on the first floor of C-60, Abhimanshree Society, as against that the Respondent, his brother and his father are residing on the ground floor. It is told at bar and admitted in the evidence that the Respondent himself is 25 days out of the house for his agency business and therefore his presence is very casual for about five days. And, therefore, concession has been given by Mr. Anturkar that the injunction as prayed for may kindly be granted. Therefore, we pass the following order

ORDER

1. Civil Application is allowed in terms of Prayer Clause (a), (b) and (c).

2. Mr. Tanaji Mhatgude, learned Advocate holding

for Mr. Anturkar submitted that the order may be stayed for four weeks. However, looking to the facts that the matter is pending for long time and there is grievance made by the Applicant wife that if the payment is not made immediately to the school authorities, the school authorities are likely to remove the names of the children from the school. Therefore, we are not inclined to grant stay.

(S.R.SATHE, J.)

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